

REMARKS

By this amendment, claims 8-10, 12, and 13 are pending, in which claim 7 is canceled without prejudice or disclaimer, claims 8-10 and 12 are currently amended, and claim 13 is newly presented. No new matter is introduced.

The Office Action mailed June 2, 2010 rejected claims 7-10 and 12 under 35 U.S.C. § 103(a) based on *Rhoads* (US 7,565,294) in view of *Beerman, Jr. et al.* (US 6,084,952), and further in view of *Wakabayashi* (US 7,065,189). As discussed above, claim 7 is canceled, and thus, the rejection of claim 7 is rendered moot. The rejection of claims 8-10 and 12 is respectfully traversed. However, in an effort to expedite prosecution and to reduce issues for potential appeal, Applicants have amended claims 8-10 and 12 to clarify the recited features.

With respect to the rejection of independent claims 8, 10, and 12, Applicants respectfully submit that *Rhoads*, *Beerman, Jr. et al.*, and *Wakabayashi*, taken individually or in combination, fail to disclose or render obvious all of the recited features of claims 8, 10, and 12. For example, *Rhoads*, *Beerman, Jr. et al.*, and *Wakabayashi* fail to disclose or render obvious “a transmitted identity tag being receivable by an object device . . . wherein the object device is associated with an object that, along with the object device, is located in physical proximity to the apparatus,” as recited in independent claim 8, and as similarly recited in independent claims 10 and 12.

The Office Action, citing Fig. 4 and col. 25, lines 13 and 14 of *Rhoads*, alleges that *Rhoads* discloses “the object device being associated with an object that, along with the object device, is located in an environment in which the portable radio communication device is located.” (See, Office Action, page 2). In particular, and with respect to independent claim 8, the Office Action alleges that the portable device, clearinghouse, and database, all of *Rhoads*,

correspond to the claimed apparatus, object device, and object, respectively. Applicants respectfully disagree.

Rhoads, in pertinent part, discloses:

Abstract: **A portable device for use with audio or visual content** (e.g., an MP3 player-like device, or a camera-enabled device) is equipped with one or more features/capabilities, including: **a user interface through which a consumer can instruct that content be delivered to a different consumer's device**, the ability to derive identifiers from content and take action(s) based thereon, the ability to count playbacks of content; and/or the ability to interact with remote web services. A variety of other features and arrangements are also detailed.

Col. 25, lines 9-17: (Confirmation of device ownership can be implemented in various ways. One is to identify to the clearinghouse all music devices owned by a user at the time the user registers with the clearinghouse (supplemented as necessary by later equipment acquisitions). **Device IDs associated with a user can be stored in a database at the clearinghouse, and these can be encoded into the downloaded music as permitted devices to which the file can be copied, or on which it can be played.**)

Rhoads generally describes a method and system for employing digital content. In particular, *Rhoads* discloses a portable device for use with audio or visual content that is equipped with one or more features/capabilities, including a user interface through which a consumer can instruct that content be delivered to a different consumer's device. (See, *Rhoads*, Abstract). However, *Rhoads* fails to disclose that either the clearinghouse (the alleged object device) or the database (the alleged object) is located in **physical proximity** to the portable device of *Rhoads* (the alleged apparatus). At best, *Rhoads* discloses that device IDs associated with a user can be stored in a database at the clearing house, but fails to disclose any portable communication device that can reasonably be considered as being in physical proximity to the clearinghouse or database.

The secondary references of *Beerman, Jr. et al.* and *Wakabayashi* fail to at least remedy the above discussed deficiencies of *Rhoads*. Accordingly, the combination of *Rhoads*, *Beerman, Jr. et al.*, and *Wakabayashi*, fails to disclose or render obvious “a transmitted identity tag being receivable by an object device . . . wherein the object device is associated with an object that, along with the object device, is located in physical proximity to the apparatus,” as recited in independent claim 8, and as similarly recited in independent claims 10 and 12.

Furthermore, Applicants respectfully submit that one having ordinary skill in the art would not have been motivated to modify the teachings of *Rhoads* with the alleged teachings of *Beerman, Jr. et al.* and *Wakabayashi*. *Beerman, Jr. et al.* is directed to a system and method for communicating information by electronic messages between a remote device and a messaging server, over a telephone network using acoustical coupling, in which the acoustical tones correspond to the information. *Wakabayashi* is directed to a voice mail apparatus and method of processing voice mail. Applicants respectfully submit that the system of *Rhoads* is not even remotely related to the systems of *Beerman, Jr. et al.* and *Wakabayashi*, and thus, one having ordinary skill in the art would not have been motivated to modify the system of *Rhoads* to incorporate the alleged features from the systems of *Beerman, Jr. et al.* and *Wakabayashi*. The rationales presented in the Office Action for modifying *Rhoads* appear to be nothing more than an agglomeration of bits and pieces of the claimed subject matter thrown together through the exercise of impermissible hindsight, without any of the “articulated reasoning with some rational underpinnings” required by the U.S. Supreme Court, *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385(2007). Thus, the Office Action’s conclusion of obviousness relies on impermissible hindsight.

Therefore, independent claims 8, 10, and 12 are patentable over *Rhoads, Beerman, Jr. et al., and Wakabayashi*. In addition, dependent claim 9 also is patentable over *Rhoads, Beerman, Jr. et al., and Wakabayashi*, at least in view of the patentability of independent claim 8, from which claim 9 depends, as well as for the additional features this claim recites. Accordingly, withdrawal of the rejection is respectfully requested.

In addition, newly presented independent claim 13 also is patentable, for similar reasons as discussed above with respect to independent claims 8, 10, and 12.

Therefore, the present application, as amended, overcomes the rejection of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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